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Federal Communications Commission

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DA 95-1372

Before the  
Federal Communications Commission  
Washington, D.C. 20554

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: June 16, 1995;

Released: June 29, 1995

By the Chief, Allocations Branch:

MM Docket No. 93-47

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments.  
FM Broadcast Stations.  
(Latta, Marion, Camden and  
Blythewood, South Carolina)<sup>1</sup>

RM-8188  
RM-8243

1. At the request of Winfas of Belhaven, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 2095 (1993), requesting the substitution of Channel 232C3 for Channel 232A at Marion, South Carolina, the reallocation of Channel 232C3 from Marion to Latta, South Carolina, as the community's first local aural transmission service, and the modification of Station WCMG(FM)'s license accordingly (RM-8188).<sup>2</sup> To accommodate the Latta allotment, petitioner proposes the substitution of Channel 274A for Channel 232A at Camden, South Carolina, and modification of Station WPUB-FM's license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted to Latta. Joseph Adams Ranke ("Ranke") filed comments and a counterproposal proposing the allotment of Channel 232A at Blythewood, South Carolina, as the community's first local aural transmission service (RM-8243).<sup>3</sup> Reply comments were filed by petitioner.<sup>4</sup> Ranke filed untimely responsive comments and a supplement. Petitioner filed a motion to strike and con-

<sup>1</sup> The community of Blythewood, South Carolina, has been added to the caption.

<sup>2</sup> Assignment of the license for Station WCMG(FM) from Winfas of Belhaven, Inc., to Winfas of Virginia, Inc. (File No. BALH-931227GE), was granted on December 30, 1993 and consummated on December 31, 1993.

<sup>3</sup> The counterproposal was placed on Public Notice on May 25, 1993, Report No. 1942. Although the counterproposal was put on Public Notice, in retrospect, it should not have been because the counterproposal failed to include an affidavit verifying that the statements contained in it were accurate to the best of the counterproponent's knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposals must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). After the reply comment period for the counterproposal, Ranke filed supplemental pleadings to correct the omission and to respond to allegations made by petitioner. However, counterproposals must be technically and procedurally correct at the time of their filing. See *Hattiesburg, Mississippi*, 7 FCC Rcd 7602 (1992). See also, *Broken Arrow and Bixby, Oklahoma and Coffeetown, Kansas*, 3 FCC Rcd 6507 (1988), *recon. denied*, 4 FCC Rcd 6981 (1989). The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comments periods specified in the *Notice*. Furthermore, we find that Ranke's unauthorized pleadings would cause prejudice to another party and are of no decisional significance. Therefore, in accordance with Section 1.415(d) of the Commission's Rules, Ranke's unauthorized pleadings and petitioner's response thereto, will not be accepted and considered in the resolution of this proceeding. We will dismiss the

counterproposal.

Although we will dismiss the counterproposal due to the procedural defect, we comparatively considered the counterproposal and determined that even if the proposal was procedurally correct, the counterproposal would be denied on other grounds. In an effort to accommodate both proposals and resolve the conflict, the staff conducted a channel search which revealed that there were no alternate Class C3 channels available at Latta or Class A channels available at Blythewood. Therefore, our decision would be based on the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), which are: (1) First full-time aural service; (2) Second full-time aural service (3) First local service; and (4) Other public interest matters. [Priorities 2 and 3 have co-equal weight.] Neither petitioner or Ranke claim that their respective proposals would provide a first or second full-time aural service. (Ranke notes that a daytime AM channel was allotted to Blythewood but a station has never been built.) An engineering analysis has determined that the allotment of Channel 232A at Blythewood could possibly provide the community with a second local service, since Station WBAJ has an active construction permit to build an AM daytime station. The station's application for reinstatement of its construction permit (File No. BP-940630DC) was granted on August 23, 1994. Station WBAJ also filed applications for extension of time (File No. BMP-950222DC) and to modify its construction permit (BMP-950307AD), which are pending. Accordingly, since for purposes of Section 307(b) comparisons under the FM allotment priorities a first local service is generally preferred over a possible second local service, the Latta proposal would prevail. In addition, Latta is a more populous community with a population of 1,565 persons versus Blythewood with a population of 164 persons.

<sup>4</sup> Petitioner also filed an original of the Declaration of Gary M. Davidson to be substituted for the facsimile (Attachment 2) attached to the reply comments.

tingent reply to the supplement. An objection was filed by Ranke. Petitioner filed a consolidated reply to the objection.

2. In support of its proposal, petitioner states that Latta is an incorporated community with a population of 1,565<sup>5</sup> persons. It has a mayor and town council, as well as numerous businesses, financial institutions, churches and civic organizations such as Lions Club and Rotary Club. In addition, Latta has its own police and volunteer fire departments. Petitioner also states that Marion (population 7,658), will not be deprived of its only local aural transmission service, since FM Station WKSJ and AM Station WKXS will remain licensed to the community.

3. We believe the public interest would be served by the substitution of Channel 232C3 for Channel 232A at Marion, and its reallocation to Latta, since it would provide the community with its first local aural transmission service and enable Station WCMG(FM) to expand its coverage area. Specifically, the reallocation would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities. See *Revision of FM Assignment Policies and Procedures*, fn.3.

4. In making this analysis, we find that under priority three, Latta would receive a first local transmission service. On the other hand, Marion already has an AM and FM local transmission service and, therefore, does not trigger priority three. Thus, it falls under priority four, other public interest factors. By comparison, we find that the reallocation to Latta should be made because it triggers the higher allotment priority of a first local transmission service. Furthermore, the reallocation will not remove the sole local transmission service, since FM Station WKSJ and AM Station WKXS will remain licensed to the community. Latta is not located in or adjacent to an Urbanized Area. In addition, our engineering analysis indicates that the upgrade and reallocation to Latta will enable Station WCMG(FM) to provide service to a gain area of 3,032 square kilometers (1,171 square miles) with a population of 116,666, who will receive five or more full-time reception services. We recognize that the removal of Station WCMG(FM) from Marion will create a reception service loss area of 736 square kilometers (284 square miles) with a population of 20,380, who will continue to receive at least five full-time reception services.<sup>6</sup> While we carefully consider any proposal that would result in a loss of existing reception service, we believe the public interest is well-served by this reallocation proposal, given the large reception service gains, as well as the fact that this proposal permits a number of other service improvements as well.

5. An engineering analysis has determined that Channel 232C3 can be allotted to Latta in compliance with the Commission's minimum distance separation requirements

with a site restriction of 10.7 kilometers (6.6 miles) north-west to avoid short-spacings to vacant but applied for Channel 231A, Kingstree, South Carolina, and Station WZKB, Channel 232A, Wallace, North Carolina.<sup>7</sup> Additionally, Channel 274A can be allotted to Camden in compliance with the Commission's minimum distance separation requirements at Station WPUB-FM's licensed transmitter site.<sup>8</sup> In accordance with Section 1.420(i) of the Commission's Rules, we will modify Station WCMG(FM)'s license to specify operation on Channel 232C3 at Latta in lieu of Channel 232A at Marion, South Carolina. We will also modify Station WPUB-FM's license to specify operation on Channel 274A in lieu of Channel 232A at Camden, South Carolina.

6. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. See *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). As indicated in the *Notice*, Kershaw Radio Corporation, licensee of Station WPUB-FM, has agreed to change channels in order to accommodate the Latta allotment. Accordingly, petitioner has stated its willingness to reimburse Station WPUB-FM for reasonable costs incurred in changing frequency.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 14, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Camden, South Carolina	274A
Latta, South Carolina	232C3
Marion, South Carolina	263C3

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Winfas of Virginia, Inc. for Station WCMG(FM), Marion, South Carolina, IS MODIFIED to specify operation on Channel 232C3 at Latta, South Carolina, in lieu of Channel 232A at Marion, South Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

<sup>5</sup> Population figures taken from the 1990 U.S. Census.

<sup>6</sup> When the areas and populations of Station WCMG(FM)'s current and proposed service areas are compared, there would be a net service gain of 96,286 people by granting the petitioner's proposal (i.e., 116,666 people in the gain area of Latta

minus 20,380 people in the loss area of Marion).

<sup>7</sup> The coordinates for Channel 232C3 at Latta are North Latitude 34-25-33 and West Longitude 79-29-57.

<sup>8</sup> The coordinates for Channel 274A at Camden are North Latitude 34-13-31 and West Longitude 80-40-44.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Winfas of Virginia, Inc., licensee of Station WCMG(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license and upgrade.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Kershaw Radio Corporation for Station WPUB-FM, Camden, South Carolina, IS MODIFIED to specify operation on Channel 274A in lieu of Channel 232A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in WPUB-FM's license, BMLH-910305KA, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the rules, PROVIDED the transmission facilities comply in all respects with license BMLH-910305KA, except for the channel as specified above and license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. IT IS ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following licensees:

Winfas of Virginia, Inc.  
P.O. Box 4108  
Lynchburg, Virginia 24502  
(Licensee of Station  
WCMG(FM))

Kershaw Radio Corporation  
P.O. Box 753  
Camden, South Carolina 29020  
(Licensee of Station  
WPUB-FM))

12. IT IS FURTHER ORDERED, That the counter-proposal filed by Joseph Adams Ranke to allotment Channel 232A at Blythewood, South Carolina, IS DISMISSED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau